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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re B.H., et al., Persons Coming Under the Juvenile Court Law.	B211691 (Los Angeles County Super. Ct. No. CK57697)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. E.H., et al., Defendants and Appellants.	

APPEAL from orders of the Superior Court of Los Angeles County, Margurite Downing, Judge. Affirmed in part, reversed in part.

Lori Siegel, under appointment by the Court of Appeal, for Defendant and Appellant E.H.

Catherine C. Czar, under appointment by the Court of Appeal, for Defendant and Appellant J.H.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel for Plaintiff and Respondent.

Parents E.H. and J.H. appeal from the court's order extending dependency jurisdiction over their four minor children, and challenge the dispositional orders of the court. They argue that the orders are not supported by substantial evidence. We find substantial evidence to support dependency jurisdiction only as to the child B.H. and reverse as to his three siblings. The parents' only challenge to the dispositional order was that there was no basis for jurisdiction, so we affirm that order as to B.H. and reverse it as to the other children.

FACTUAL AND PROCEDURAL SUMMARY

According to the detention report, the Department of Children and Family Services (the Department) received an immediate response referral on June 24, 2008, alleging that W.H., then three years old, was found wandering unsupervised in the driveway at parents' residence. The referral stated that father was heard hitting the child and yelling at him, and that the child was locked in a closet. An emergency social worker responded. Parents said they recently had moved into the apartment, and had put a chain high up on the front door to stop W.H. from leaving the apartment.

The worker observed that another child, B.H. (two years old), was very pale. Mother said he suffered from anemia and that she and father were opposed to immunizations and that the children had not been immunized. Mother gave the name and telephone number of the doctor who examined all the children, Dr. Cho. A public health nurse contacted Dr. Cho's office and was told that on April 14, 2008, B.H.'s hemoglobin level was 5.8, which was severely low. A complete blood count was ordered by Dr. Cho. The nurse said that the expected minimum level of hemoglobin is 13. B.H. was also seen by Dr. Cho on June 30, 2008 for a rash. Mother told the doctor that she did not believe in

immunizations or blood tests. She said that Dr. Cho did not tell her B.H.'s condition was serious and she was unaware of the immediate need to have complete blood work performed.

A team decisionmaking meeting was held on August 1, 2008, with family members and representatives of the Department. The parents said they had transferred B.H.'s care to a new physician, Dr. De La Cruz, who had examined him. Dr. De La Cruz recommended a blood test that day, but because of the team decisionmaking meeting, it had been postponed until the following Monday. During the meeting, voluntary services were offered to the family because of the Department's concern there was a high risk of neglect. The parents declined the offer, saying they would prefer to "'try their luck in Court.'" Representatives of the Department discussed the circumstances, including prior referrals of neglect and failure to provide medical care, and decided to file a non-detained petition.

The public health nurse spoke with the Dr. De La Cruz in early August 2008. The doctor said she had seen the family "in length" and that B.H.'s hemoglobin level was 7.4, which was still severely low. Additional tests were pending and a referral to a hematologist was made. In Dr. De La Cruz's opinion, the family would benefit from the Department's supervision due to the parents' noncompliance and her interview with mother, which was not described.

On September 11, 2008, the Department filed a petition alleging that the four minors came within Welfare and Institutions Code section 300, subdivision (a).[1] The petition alleged that parents had medically neglected the children and failed to provide age appropriate immunizations. The Department alleged that the inaction by parents had placed the child B.H. at immediate risk of neglect and that his siblings also were at risk: "Further, such medical neglect of the children endangers the children's physical and emotional health, safety and places the child [B.H.] and his siblings . . . at risk of similar physical and emotional harm, damage and medical neglect."

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[1] All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

According to the detention report, mother told the social worker that she was giving B.H. iron drops for his anemia, that Dr. Cho did not make her aware of the seriousness of the child's condition, and that she was not in favor of drawing blood and immunizations due to her religious beliefs and parenting style. Father said B.H. was receiving special nutrition for his anemia.

The detention report summarized previous dependency matters involving parents and their children. There was a prior juvenile dependency matter in 1998 in Orange County involving father's severe physical abuse of a half sibling, T.R. (mother's son from a prior marriage). Mother failed to reunite with T.R. and J.H. was convicted of willful cruelty to T.R.

In 2004 and early 2005, reports were made that the two older children were at risk based on lack of medical assistance and abuse.[2] In January 2005, the Department filed a petition alleging the minors were at risk of serious physical harm because of father's abuse of their half brother T.R. and mother's failure to protect him; the failure of the parents to protect the children from flooding and high waters; the circumcision of W.H. in the family cabin without medical treatment; and the failure to provide immunizations and medical care. (§ 300, subds. (a), (b), (i) & (j).) (L. A. Super. Ct. No. CK57697.) The dependency court dismissed all these allegations except those relating to father's previous physical abuse of T.R. and mother's failure to protect T.R. Subsequent petitions in that proceeding alleged that parents had abducted the children and concealed their whereabouts for five months and that mother had a history of substance abuse. In an unpublished decision we denied petitions brought by the parents challenging the termination of reunification services and setting a permanency planning hearing. The jurisdiction/detention report in this case states that the prior dependency case was closed in 2007 after the parents complied with all court orders.

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[2] The two younger children, B.H. and J.H., had not been born at that point.

On September 24, 2008 at the detention hearing in this case, the juvenile court found prima facie evidence that the children were persons described by section 300, and released them to the home of the parents. Family maintenance services were ordered.

At the adjudication hearing, the court received the Department's supplement to the pretrial resolution conference report dated October 23, 2008, the jurisdiction/disposition report dated October 23, 2008, and the detention report. The jurisdiction/disposition report stated that there had been four dependency referrals involving mother's oldest son, T.R., and 12 prior referrals regarding the four younger children.

Father told the social worker that Dr. Cho wanted to do a full blood test on B.H., but that "[w]e were not interested in bleeding the child." According to father, the parents asked the doctor "if it was a big deal" and were told they only needed to give B.H. iron drops. When social workers came into the picture, father said that Dr. Cho "made it clear that he was having problems with us doing what he said. So we switched doctors and gave [B.H.] a full blood test, and we found he needs the iron drops which we were giving him. . . ." Father said he would give all four children shots if they did not have preservatives containing mercury. He explained that the hematologist in their medical group did not see children, so they changed the children's medical group to another doctor who has a hematologist who sees children. According to father, the new doctor said B.H. "'came up a little low, but he does need to go to a hematologist, but he just needs to take the drops.'" Mother told the worker that B.H. and J.H. were seen by the pediatrician on October 15, 2008, and that B.H.'s hemoglobin level had risen to 9.8. The doctor recommended that another test be done in three months and the iron drops continued.

The Department argued that the issue was medical attention for B.H., saying that it was concerned that the parents "are manipulative, and only appear to cooperate when brought into court. This is not the way things ought to work." The attorney for the Department said his client was not interested in the vaccination of the children, but that B.H. had a low red blood cell count which needed to be fixed. Based on the jurisdiction/disposition report, he argued: "The difficulty is parents don't elect to work

with the health care providers unless the Department is involved." After counsel for the parents objected that the Department was going outside the evidence before the court, counsel for the Department asked the court to take judicial notice of the prior dependency proceedings, arguing "we've had do-it-yourself medical care in the past, and it's potential we can have it in the future. So for those reasons the Department would ask that the court sustain some language . . . that would allow the Department to ensure that there's medical care for this youngster."

Counsel for the children argued for dismissal of the petition on the ground that the Department had not met its burden of proof. He argued that parents had not failed to meet the children's medical needs, and that the record demonstrated that the children were being seen by a pediatrician. In the alternative, he asked that the court strike any reference to the other three children because it had not been shown that they were at risk. Counsel for mother joined in arguing that the petition be dismissed for lack of evidence. She argued there was no evidence to support the allegation that parents had avoided blood tests on the children when needed or that they had avoided formalized medical care. Father's attorney joined in the mother's argument, saying there was no evidence that failure to provide immunizations had put the children at risk of harm. She cited evidence that the parents had taken the children to pediatricians and had medical insurance to cover them. Father's counsel argued that the most recent pediatrician to examine B.H. recommended only a follow-up appointment and no further testing at present.

The court stated: "The Department has a very low threshold in this case, and the court is concerned for whatever reason that there is a medical condition here, and the court based on what the Department has presented, gives the court pause that without the Department's intervention something could go awry. So for that reason the court is going to sustain [the allegation in the petition based on § 300] (b)(1) as amended." The court struck the allegations regarding immunization and parental neglect. Based on B.H.'s condition when the case first began, the court sustained the petition. At the disposition phase of the hearing the following day, the court ordered parents to attend medical

training for childhood anemia and proper treatment and care, to attend appointments with a pediatric nutritionist on proper dietary procedures for B.H., and to ensure that all the children attend all appropriate medical appointments.

Both parents appeal from the jurisdictional and disposition orders.

DISCUSSION

Parents challenge the court's finding that jurisdiction over the children was proper, based on section 300, subdivision (b). We review the juvenile court's jurisdictional findings for substantial evidence, contradicted or not, which supports the court's conclusions. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1649.) "'[W]hile substantial evidence may consist of inferences, such inferences must be "a product of logic and reason" and "must rest on the evidence" [citation]; *inferences that are the result of mere speculation or conjecture cannot support a finding* [citations].'" (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393-1394.)

Section 300, subdivision (b) provides for dependency jurisdiction based on failure to provide medical treatment: "The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, . . . or by the willful or negligent failure of the parent . . . to provide the child with adequate food, clothing, shelter, or medical treatment, . . . Whenever it is alleged that a child comes within the jurisdiction of the court on the basis of the parent's . . . willful failure to provide adequate medical treatment . . . the court shall give deference to the parent's . . . medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the child from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent . . . , (2) the risks to the child posed by the course of treatment or nontreatment proposed by the parent . . . , (3) the risk, if any, of the course of treatment

being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness."

"The three elements for a section 300, subdivision (b) finding are: '(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) "serious physical harm or illness" to the [child], or a "substantial risk" of such harm or illness.' (*In re Rocco M.* [(1991)] 1 Cal.App.4th [814,] 820.) The third element, however, effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur). (*Id.* at p. 824; *In re Ricardo L.* [(2003)] 109 Cal.App.4th [552,] 565; *In re Alysha S.*[(1996)] 51 Cal.App.4th [393,] 399.)" (*In re Savannah M., supra,* 131 Cal.App.4th at pp. 1395-1396.)

We agree with parents that there is no evidence in the record supporting jurisdiction as to the three siblings of B.H. under this standard. The only evidence is that the family had a pediatrician, had health insurance to cover the children, and that the children were taken for medical care when necessary. In response to father's argument that there is no evidence that these three children suffered from any medical issues requiring special attention, the Department argues: "This may be true. However, even prior to the enactment of subdivision (j) of section 300, case law has upheld petitions seeking to declare children dependents based upon abuse and/or neglect of the children's sibling. (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214-1215.)"[3] Since the Department argues that parents' abuse of B.H. by failing to provide him adequate

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[3] Section 300, subdivision (j) provides a basis for dependency jurisdiction where "[t]he child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent . . . , and any other factors the court considers probative in determining whether there is a substantial risk to the child."

medical care justifies jurisdiction over his three siblings, we turn to the evidence regarding treatment of B.H.

The Department cites evidence that parents took B.H. to three different physicians without having him seen by a hematologist as recommended or having additional blood tests done. It contends "the record is clear that the parents had no intention of taking the child for a complete blood work or have him seen by a hematologist to determine the cause of the child's anemia." The Department argues that the improvement in B.H.'s hemoglobin levels with the administration of iron drops "does not detract from the seriousness of the parents' refusal to have a full blood work performed and the child seen by a hematologist. The next time the parents choose to ignore the advise [*sic*] of their child's pediatrician, the child might not be so lucky." The Department points out that the cause of B.H.'s anemia is still unknown.

In addition to the evidence about B.H.'s anemia, the Department relies on what it describes as evidence of parents' "practice of 'do-it-yourself' medical care." In support of this assertion, it cites evidence from the previous dependency matter in this county. In that case, father had circumcised W.H. and did not have him seen by a medical professional to be sure that he did not suffer harm from this procedure. The Department acknowledges that this count was not sustained in the prior petition, and we therefore do not rely upon this evidence.

The Department argues that actual harm to a child from medical neglect is not required to establish a basis for dependency jurisdiction. It cites *In re Eric B.* (1987) 189 Cal.App.3d 996. In that case, the cancerous eye of a child was removed with the permission of his parents, who were Christian Scientists. When the parents refused to give the child chemotherapy and radiation as recommended, instead continuing his regular visits with an accredited Christian Science practitioner, a petition was filed to have the child declared a dependent in order to implement the treatment recommendations. Evidence was presented that established "an extremely high" statistical probability that the child's cancer would reappear unless he received medical treatment and that the child might die as a result. The parents objected to a physician's

recommendation that the child enter a two-year observation phase at the end of treatment, involving examinations on a less frequent basis. (*Id*. at pp. 1000-1001.) The parents appealed from the juvenile court's order continuing jurisdiction. Reasoning that the purpose of dependency proceedings is to prevent risk, not to ignore it, the Court of Appeal concluded that the state was not required to "hold its protective power in abeyance until harm to a minor child is not only threatened but actual." (*Id.* at p. 1004.)

The juvenile court concluded there was a need for continuing jurisdiction over B.H. Although his condition had improved, and there was no evidence of immediate medical danger, substantial evidence established that his anemia was persistent and required continued monitoring, as did the child's condition in *In re Eric B.*, *supra*, 189 Cal.App.3d 996. There was substantial evidence from which the juvenile court could conclude there was a substantial risk that parents would not provide this continued care.

Parents also challenge the dispositional order, but only on the basis that there was insufficient evidence to support jurisdiction. As we have discussed, there was substantial evidence to warrant jurisdiction over B.H. There was none as to the other children. The dispositional order is affirmed as to B.H.

DISPOSITION

The jurisdiction and dispositional orders as to B.H. are affirmed, and are reversed as to his three siblings.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.